***THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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+W.P.No. 13790 OF 2005

% 01-08-2005

M/s Narsai Highway Filling Station

Plot NO. A2, Industrial Estate, Main Road,

NH-9, Patancheru, Medak District. …Petitioner

VS.

$ M/s Indian Oil Corporation Limited, Divisional Office,

3-6-436 to 438, II Floor, Naspur House, Himayatnagar,

Hyderabad. …Respondent

! COUNSEL FOR THE PETITIONER: M/S C.RAGHU

^ COUNSEL FOR THE RESPONDENT : SRI P.V.SANJAY KUMAR

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? CITATIONS :

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ORDER:

1. This writ petition has been filed by M/s Narsai Highway Filling Station represented by its proprietor S.M.Sushil Kumar with a prayer to issue writ, order or direction declaring the action of the Respondent in relying upon the test Report dated 22-6-2005 and directing the petitioner to stop the sales as illegal, arbitrary and in violation of Petroleum Rules, 2002 and Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order 1990 and amendment Order 1993.

2. The proprietor of the petitioner Oil Filling Station has given his sworn affidavit in support of the writ petitioner. The case of the writ petitioner as set out in the affidavit be summarized, in brief, is as follows:

3. The petitioner is a dealer of respondent company pertaining to MS, HSD and Lubricant Oils. The Mobile Lab of the respondent Corporation visited the petitioner Petrol Bunk on 22-6-2005 and collected sample of High Speed Diesel for testing. The Mobile Test Report shows that the sample does not meet the specification WRT density and Kinematic Viscosity @ 40 decrees centigrade. The Testing Officer has not conducted the test as contemplated in Rule 193 of the Petroleum Rules, 2002 and therefore, the test report cannot be a basis for initiating any proceedings against the petitioner. A specific assertion has been made in the writ affidavit that the test report based on examination of single sample is not in accordance with the Chapater X of Petroleum Rules, 2002 and thus its reports cannot be a basis for initiating further proceedings against the petitioner.

4. The respondent filed counter affidavit. One KMVS Raju has sworn to the counter affidavit. It is stated in the counter affidavit that the writ petition is premature as no

action has been so far initiated and show cause notice has not been issued to the petitioner, basing on the findings on the test report dated 22-6-2005. As per the Marketing Discipline Guidelines, 2001 failure of the sample of the petroleum product in respect of density empowers the Corporation to immediately suspend the sales at the outlet. The action of suspension of sales is not punitive measure, but is intended for the protection of the customers, otherwise the customers buy contaminated petroleum products if the outlet is allowed to function normally. The Petroleum Rules, 2002 is not applicable with regard to drawing of samples for testing by Mobile Laboratories. Annexure III of the Marketing Discipline Guidelines, 2001 stipulates procedure for sample collection and testing of the sample drawn from retail outlet. Clause 4 of the said annexure deals with the procedure to be followed with regard to drawing of samples by Mobile Laboratories. The said clause stipulates that in case of HSD, three 1 liter samples for each of the concerned tanks has to be drawn in the event the product fails the clinical tests. In the present case, the Mobile Lab visited the petitioner retail outlet on 22-6-2005 and HSD sample drawn from tank 1 was found deficient in respect of density at 15 degrees centigrade and Kinematic viscosity at 40 degrees centigrade. These findings are reflected in the Test Report bearing No. ML/HSD/373, dated 22-6-2005. In view of the failure of the sample in respect of these clinical tests, the Sampling Officer drew three 1 liter samples of HSD in accordance with the stipulated procedure in the presence of the petitioner's representative, who also signed the sample labels in the capacity of a witness. Out of the three samples of HSD which were drawn as prescribed, one sample was handed over to the dealer, the other two were handed over to the concerned Sales Officer of the Corporation for necessary further testing/retention as stipulated in the Marketing Discipline Guidelines, 2001. The samples drawn on the location were tested strictly as per procedures laid down in BIS Test Methods. The tests referred to by the petitioner viz P20 and P21 of IS 1448 are the tests methods for Flash Point Test of Petroleum Products which have no relevance to the present case as the sample drawn at the petitioner's outlet was not found wanting in respect of this parameter. Rule 193 of the Petroleum Rules, 2002 also pertains to testing of Flash Point by the Central Government and as such, the petitioner's reliance on the same is misplaced. I deem it appropriate to refer para 6 of the counter affidavit and it is thus:-

> *"The petitioner's contention that three sets samples have to be tested and the results correleated, is not tenable as the*

Marketing Discipline Guidelines, 2001 specifically provide for testing of only one sample, which has been done in this case. The sample drawn at the petitioner's outlet was subjected to clinical tests in addition to density check as envisaged under the Marketing Discipline Guidelines, 2001, the sales at the petitioner's outlet were immediately suspended in keeping with the Marketing Discipline Guidelines, 2001. One sealed sample was handed over to the Dealer's Representative and the other two sealed samples, with properly pasted sample tag, duly signed by the Inspecting official and the dealer's representative were handed over to the Sales Officer of the Corporation for necessary further testing along with the relevant Depot Retention Sample. This test was conducted on 25-6-2005 at the Indian Oil Corporation Limited's Laboratory at its Sanatnagar Depot and showed that the petitioner's Retail outlet sample failed in respect of density and kinematic viscosity while the Depot Retention Sample was found to have passed the test in respect of these parameters. It is therefore manifest that the product at the Petitioner's Retail Outlet was adulterated and the Petitioner necessarily has to face consequential disciplinary action in this regard. It is also relevant to state that the Petitioner's past record is not inspiring in as much as the Petitioner has already faced Disciplinary Action in respect of the failure of MS and Lubricant samples drawn from his outlet earlier and the petitioner cannot be permitted to seek the indulgence of this Hon'ble Court. It is therefore submitted that the petitioner cannot grasp at technicalities, which are not even applicable, so as to evade the consequences of the adulteration of the product detected at the Retail outlet. The Corporation is well within its right to initiate necessary and suitable disciplinary action against the petitioner by duly issuing a show cause notice in terms of the dealership agreement and the relevant guidelines. The petitioner cannot be permitted to circumvent the same by prematurely approaching this Hon'ble Court seeking to challenge the Test Report itself. It is therefore submitted that the writ petition is devoid of merit and it is prayed that this Hon'ble Court maybe pleased to hold as such and dismiss the same with costs".

5. Heard Sri.C.Raghu, learned counsel appearing for the petitioner and P.V.Sanjay Kumar, learned Standing Counsel appearing for the respondent.

6. The learned counsel appearing for the petitioner submits that the testing of

sample is not in accordance with Rule 193 of the Petroleum Rules, 2002 and thus testing report cannot be based for initiating any action against the petitioner. He refers Rule 193 of Petroleum Rules, 2002. For better understanding I may refer Rule 193 and it is thus:-

"193. Method of test:

1. *The testing Officer shall test the samples in the manner laid down in the Indian Standard Specification No. IS-1448 (Part I): (P20) or (P21), as applicable, and for the time being in force.*

2. *IN all cases at least three samples shall be separately tested, the average of the three readings being corrected for the termo meter correction, if any, and for the barometric correction in case of dispute.*

3. *If the average flash point is not lower than 23 degree C, the whole of the petroleum represented by the samples shall be deemed to be petroleum Class B or petroleum Class C according to the average flash point determined by the test.*

4. *If the petroleum to be tested is viscous or solid or contains sediments or thickening ingredients, such petroleum shall be tested in accordance with the methods specified in the Fifth Schedule".*

7. The Petroleum Rules, 2002 are framed in exercise of power conferred by Sections 4,5, 14, 21, 22 and 29(1) of the Petroleum Act, 1934.

8. Chapter X deals with testing of Petroleum and it contains 14 Rules, i.e. Rules 186 to 199. Rule 186 deals with drawing of sample. Rule 187 deals with forwarding and retention of samples. Rule 188 deals with procedure of delivery of samples. Rule 189 deals with selection of samples from imported cargo. Rule 190 deals with standard test apparatus. Rule 191 deals with certification of apparatus. Rule 193 deals with method of test. Rule 194 deals with procedure when tests show want of uniformity. Rule 195 deals with the certificate of tests. Rule 196 deals with fee for inspection and comparison. Rule 197 deals with fee for testing. Rule 198 deals with the power to enter, inspect, search and seize. Rule 199 deals with the power of the Chief Controller or Controller in case any petroleum or any material or equipment connected is no longer fit for storage transport or use.

9. The learned counsel for the petitioners submits that the test report is not in compliance with the said Rules and thus the said report cannot be a basis for initiating further action against the petitioner.

10. The learned Standing Counsel appearing for the respondent submits that Rule 193 is not applicable with regard to drawing of sample by Mobile Laboratories and therefore, its report can be based for initiating further action. He, however, submits that since no show cause notice has been issued basing on the test reports, the writ petition is premature and the same is liable to be dismissed in limini.

11. The fact remains that Mobile Lab of the respondent Corporation collected samples of HSD for testing from the petroleum tank of the petitioner on 22-6-2005. The question that falls for consideration is whether the samples collected by the Mobile Laboratory is to be tested in accordance with the Rules 193 or in accordance with the Marketing Discipline Guidelines, 2001. Chapter V of the Petroleum Rules, 2002 deals with testing of petroleum which contains number of Rules i.e. Rules 186 to 199. These Rules are applicable when the sample is collected by Testing Officer. Testing Officer has been defined in Rule 2 (xxxiii), which reads as follows:

> "*Testing Officer" means an officer authorized by the Central Government to test petroleum under Section 17 of the Act"*

12. Under Section 17 of the Act, the Central Government may authorize any officer by name or by virtue of office to test petroleum of which samples have been taken under this Act, or which may have been taken under this Act. It is apposite to refer to Section 17 of the Petroleum Act and it is thus;

> "*Testing Officers. The Central Government may authorize any officer by name or by virtue of office to test petroleum of which samples have been taken under this Act, or which may have been submitted to him for test by any person, and to grant certificates of the results of such tests".*

13. Admittedly, the Mobile Laboratory which has drawn the sample does not come

within the definition of Testing Officer. The Marketing Discipline Guidelines, 2001 contains the procedure for drawing samples by Mobile Laboratory. It is no more in dispute that the Mobile Laboratory has collected the samples and tested the same in accordance with the Marketing Discipline Guidelines, 2001. Therefore, the contention of the writ petitioner that the sample has not been tested in accordance with the Rule 193 of the Petroleum Rules has no substance, since the same is not applicable to the drawal of the sample by Mobile Laboratory.

14. Thus, the writ petition is devoid of merits and it is hereby dismissed. No order as to costs.

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B.Seshasayana Reddy,J.

1st August, 2005

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1st August, 2005.